TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~1480~~. 1045 732

ARTHUR C. BABSON, PLAINTIFF IN ERROR,

vs.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 8, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JANUARY 11, 1889.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Arthur C. Babson, plaintiff, and William H. Robertson, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-nine, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 30 day of November, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
U. S. Circuit Judge, Second Circuit.

2 [Endorsed:] 8818. U. S. Supreme Court. Arthur C. Babson, plaintiff in error, against William H. Robertson, defendant in error. Writ of error. Hartley & Coleman, attorneys for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 30 day of Nov., 1888. Stephen A. Walker, P., attorney for defendant in error. 146. Ch'y.

[Stamped:] U. S. circuit court. Filed Nov. 30, 1888. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 3 to 29, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Arthur C. Babson,

plaintiff in error, against William H. Robertson, defendant in error as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourth day of January, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and thirteenth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

3 *Summons.*

Supreme Court of the State of New York, City and County of New York.

ARTHUR C. BABSON, Plaintiffs,
against
WILLIAM H. ROBERTSON, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, Nov. 19, 1883.

HARTLEY & COLEMAN,
Plaintiff's Attorneys.

Office and post-office address, 62 Wall street, New York city.

4 [Endorsed:] N. Y. supreme court. A. C. Babson against William H. Robertson. Summons. Received Dec. 3, 1883. U. S. attorney's office. Hartley & Coleman, pl'ff's attorneys, 62 Wall street, New York city. Nov. 19, 1883.

5 The President of the United States of America to the judges of the supreme court of the State of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against William H. Robertson, defendant, by Arthur C. Babson, plaintiffs, do therefore command you that the record and proceedings in said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 12th day of December, 1883, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 8th day of December, in the year one thousand eight hundred and eighty-three.

[L. S.] TIMOTHY GRIFFITH, *Clerk.*

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

6 [Endorsed:] 8818. U. S. circuit court. A. C. Babson *vs.* William H. Robertson. Copy. Certiorari. Elihu Root, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Dec. 8, 1883. Yours, Elihu Root, U. S. attorney, attorney for defendant. To H. & C., plaintiff's attorney-. Due service of a copy of the within and of the above notice is hereby admitted. New York, Dec. 8, 1883. Hartley & Coleman, plaintiff's attorneys.

7 *Complaint.*

Supreme Court, State of New York, City and County of New York.

ARTHUR C. BABSON, Plaintiff,
against
WILLIAM H. ROBERTSON, Defendant.

Plaintiff complains—

1st. That the defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiff during said times duly imported and entered at the port of New York the goods described in the bill of particulars annexed—certain cement contained in the usual & necessary covering & outside packages.

3d. That plaintiff in order to obtain said goods was compelled to pay the defendant, as such collector, in excess of the lawful rate of duty on said goods and of the amount required by law, & as & for duties on said coverings and packages, ten hundred & eleven $\frac{70}{100}$ dollars.

4th. That plaintiff filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto.

5th. That plaintiff made due and timely appeals on each entry to the Secretary of the Treasury, who has neglected for more than ninety days, as well from the dates of said appeals as prior to the commencement of this action, to decide said appeals.

6th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, if rendered, together with the other particulars required by law, and is made a part hereof.

7th. That said sum so exacted as aforesaid has never been repaid to plaintiff and is still due and owing to him.

Wherefore plaintiff demands judgment against defendant for the sum so exacted as aforesaid, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

HARTLEY & COLEMAN,
Attorneys for Plaintiff.

[Endorsed :] 8818. Supreme court city and county of New York. A. C. Babson against William H. Robertson. Complaint and bill of particulars. Due service of a copy hereof is hereby acknowledged this — day of ——, 188–. Received Dec. 4, 1883, U. S. attorney's office. —— ——, att'y for def't. Hartley & Coleman, pl'ff's attorneys, 62 Wall street, New York city.

Name of Importer (for all the Importations), A. C. Babson.

Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.	Date of liquidation at custom-house.
			1883.	1883.	1883.		1883.	1883.		1883.
The usual & necessary coverings & outside packages containing cement & "charges."	Helene	Bremerhaven	Feb. 5	April 6	April 6	$97 20	May 7	May 7	None	April 28.
	Blackhawk	"	" 21	Mar. 30	Mar. 30	91 20	" 7	" 7		" 28.
	I. F. Whitney	London	" 24	" 24	" 24	119 46	April 28	" 18		" 19.
			1882.							
	Antoinette, U. H. 31951.	Bremerhaven	Oct. 26	Jan. 22	May 17	125 40	May 18	" 18		May 17.
	Honora		Nov. 20	Mar. 22	Mar. 22	100 00	April 25	" 18		Apr. 21.
			1883.							
	Mozart		Jan. 13	" 22	" 22	77 76	" 25	" 18		" 21.
	Care		" 10	" 28	" 28	21 00	" 25	" 18		" 23.
	Amaranth		Feb. 7	Apr. 17	Apr. 17	98 60	May 18	May 18		May 14.
	Fruhawdel		" 20	" 17	" 17	48 60	" 18	" 18		" 15.
	J. W. Wendt		Apr. 1	May 19	May 24	86 60	June 11	June 11		June 11.
	Cedar Croft		" 2	" 23	May 25	102 20	Aug. 17	Aug. 17		Aug. 17.
	Sebastian Bach		" 4	" 29	" 29	43 80	June 18	June 18		June 18.

9 Circuit Court of the United States for the Southern District of New York.

ARTHUR BABSON
versus
WILLIAM H. ROBERTSON, Collector, etc. } 8818.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint; and he denies that the plaintiff was compelled to pay or did pay defendant, as collector or otherwise, the sum stated in the complaint, or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

II. He denies that the plaintiff filed with defendant any protest or protests in writing in which the grounds of objections to the exaction of duties on said goods were distinctly and specifically stated.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiff.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the
10 complaint to have been imported at the times therein mentioned were in fact such goods as are described in the said complaint.

V. As to the following importations severally he alleges that no protest was filed within ten days after the ascertainment and liquidation of the duties thereon: Importation per "Cedar Craft," entry No. 66746.

VI. As to the following importations severally he alleges that no appeal was taken to the Secretary of the Treasury within thirty days after the date of the ascertainment and liquidation of duties thereon: Importation per "Cedar Craft," entry No. 66746.

VII. And, further answering, defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were demanded of plaintiff, and were by plaintiff voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith, before the commencement of this action and before the receipt by defendant of any protest or objection on the part of the plaintiff, paid over by defendant in his official capacity aforesaid to the United States and placed beyond his control.

VIII. And, further answering, defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were sums due from plaintiff to the United States as duties according to the rate of duty imposed by law upon articles of merchandise imported by
11 plaintiff and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon plaintiff's entry thereof were collected or received by defendant from the plaintiff.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

ELIHU ROOT,
United States Attorney, Attorney for the Defendant.

(Endorsed:) 8818. U. S. circuit court, southern district of New York. Arthur C. Babson *vs.* W. H. Robertson, collector, etc. Answer. Elihu Root, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. New York, May 21, 1884. Hartley & Coleman, plaintiff's attorney. To H. & C.

12 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the 25th day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

Present the Honorable E. Henry Lacombe, circuit judge.

ARTHUR C. BABSON
vs.
WILLIAM H. ROBERTSON. } N. S., 8818.

Now comes the plaintiff, by Hartley and Coleman, Esqs., his attorneys, and moves the trial of this cause.

Likewise comes the defendant, by William W. Smith, Esq., ass't U. S. att'y, his attorney; thereupon a jury is empanelled and the cause proceeds to trial.

After hearing the evidence of the parties and the argument of counsel the court directs the jury to find a verdict for the defendant; thereupon the jury render a verdict whereby they find for the defendant.

It is ordered that the defendant have a stay of all proceedings on said verdict for 60 days within which to make and serve a case, with leave to turn the same into a bill of exceptions.

A copy.

JOHN A. SHIELDS, *Clerk.*

13 *Judgment.*

United States Circuit Court, Southern District of New York.

ARTHUR C. BABSON
vs.
WILLIAM H. ROBERTSON. } 8818.

The issues in this action having been brought on for trial before Mr. Judge Lacombe and a jury, at a circuit court of the October term, 1887, and the issues having been tried and a verdict for the defendant having been duly rendered on the 25th day of January, 1888, and his costs having been adjusted at $48.85—

Now, on motion of Stephen A. Walter, United States attorney, for defendant, it is adjudged that the defendant have judgment against

the plaintiff upon the issues in this action, and that he recover the sum of $48.85, his taxed costs, and have execution therefor.

Judgment signed this 9 day of Nov., 1888.

JOHN A. SHIELDS, *Clerk.*

14 [Endorsed:] 8818. United States circuit court. Arthur C. Babson *vs.* Wm. H. Robertson. Judgment-roll. Stephen A. Walker, United States attorney, for defendant. Filed ——, 187–. Costs, $48.85. 2 o'clock p. m. U. S. circuit court. Filed Nov. 9, 1888. John A. Shields, clerk.

15 *Plaintiff's Bill of Exceptions.*

U. S. Circuit Court, Southern District of New York.

ARTHUR C. BABSON
vs.
WILLIAM H. ROBERTSON. } No. 8818.

Be it remembered that at the term of this court of October, 1887, to wit, on Wednesday, the 25th day of January, 1888, before the Honorable E. H. Lacombe, circuit judge, and a jury, this cause came on to be tried, and the following, among other, proceedings took place:

The plaintiff, to sustain the issues in his behalf tendered, introduced testimony tending to show an importation by him at the port of New York, *ex* Antoinette, Jan. 22, 1883, of a certain lot of Portland cement in barrels, which he entered then in bond for warehouse.

The invoice of said cement on which entry was made was dated at Izzano, Germany, October 26, 1882, and declared the value to be 7 shillings per barrel, "free on board in Hamburg," and this value of 7*s.* f. o. b., or free on board, was stated in the warehouse entry.

16 Testimony was given tending to show that the expression used in the invoice, "free on board," meant the cost of the cement, the cost of the barrel or package which contains it, and the cost of transportation to the place of shipment and putting on the ship.

Upon the said entry the statutory oath was taken as follows:

Consignee's, Importer's, or Agent's Oath.

DISTRICT AND PORT OF NEW YORK:

I, A. C. Babson, do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of —— are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the "Antoinette," whereof —— is master, from Hamburg, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence

of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise according to said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true and were made by the person by whom the same purport to have been made, and that if at
17 any time hereafter I discover any error in the said invoice or in the account now tendered of said goods, wares, and merchandise or receive any other invoice of the same I will immediately make the same known to the collector of this district.

And I do further solemnly and truly swear that, to the best of my knowledge and belief, O. F. Alsen & Son are the owners of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost or fair market value at Izzano of the said goods, wares, and merchandise and all the charges thereon and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

A. C. BABSON.

Sworn to this 25th day of January, 1883, before me—
N. C. WILLIAMS,
D'y Collector.

Subsequent to the passage of the tariff act of March 3rd, 1883, and about the latter part of April, 1883, plaintiff, having received an amended consular invoice of said cement in which the said price of 7*s.* was separated into its component parts showing the cost of the cement, the cost of the barrel containing the same, and the costs and charges of packing and putting the goods on board of
18 the vessel in which the importation was made, and the goods being still in bonded warehouse, presented said invoice to the proper officer of the customs, and said to him that the goods were all in warehouse, and under the act recently passed were entitled to liquidation without the estimation of the charges, and that he presented that invoice as evidence of what the charges were and asked him to reliquidate the entry, which he refused to do.

Plaintiff then wrote to and sent the invoice to the Secretary of the Treasury. The invoice was returned and he refused to act on it.

On the 17th of May, 1883, plaintiff made a withdrawal entry for consumption of a portion of said cement, at which time he asked permission of the proper officer of the customs to put in the entry with the charges separate, who said he would allow plaintiff to put in nothing but the original entry, although plaintiff had not paid the duties at all, and was prepared to furnish an invoice of the charges separate then. He would not recognize it, and plaintiff had

to put in the original entry. These goods were in bonded store at that time.

Plaintiff tendered him the amended consular invoice; he would not take it. He insisted upon using the original invoice, although at that time plaintiff had not paid the duties.

And plaintiff was compelled to pay the full amount of duty
19 at the rate of 20% ad valorem on the value of said barrels and other costs and charges, as well as on the value of the cement itself, in order to obtain his goods.

All these goods were withdrawn from warehouse prior to July 1, 1883.

Evidence was further given on behalf of the plaintiff tending to show the importation and entry by him at the custom-house of the port of New York on divers dates between the 3rd of March, 1883, and the 1st of July, 1883, of various other lots of Portland cement packed in barrels upon each of which the usual oath upon entry was taken.

The invoice in each of said cases was made and dated at Izzano, Germany, prior to March 3rd, 1883, and declared the value therein stated to be free on board at Bremerhaven, and the entries expressed also the fact that the value was f. o. b.

As to one of these entries the plaintiff testified:

Q. Will you state what took place at the making of that entry between yourself and collector or person in charge of the department?

A. The vessel arrived after this law had passed, and I understood from the broker that there was no more duty to be paid on the barrels. I had these invoices, and I went to the man who takes these entries with my broker and asked him what I should do in the matter—how I should make out my invoices. He said he
20 did not know and could not give me any information. I said: "I am prepared to give an invoice with the charges separate on which I wish to pay the duty." He look over his files of information received from Washington and said he could not allow me to take any oath except on the consular invoice. Well, I had not at that time any invoice but the consular invoice in which the charges were not separated, and I wished to separate the charges and give a bond to produce copies where the charges would be separated by the manufacturer according to law, which he declined to allow me to do.

As to four of said importations the plaintiff, on or about the 21st of April, 1883, after the payment of the duties and delivery of the goods, tendered to the proper officers of the customs in charge of said matters amended consular invoices of said cement, in which the price originally stated as inclusive of all charges free on board was separated into its component parts, showing the cost of the cement, the cost of the barrel containing the same, and the costs and charges of packing and putting the goods on board of the vessel in which importation was made, but said customs officers refused to receive or consider the same in the liquidation of the entries of said importa-

tions. As to each of said entries evidence was further given tending to show, on behalf of the plaintiff, that at the time of making the entry he claimed the right of the proper customs officers in
21 charge of the business to distinguish and separate upon the entry the nature and amount of the charges in detail; but in each case he was refused permission to separate them and compelled, in order to enter and get his goods, to make his entry conform to the earlier consular invoices presented by him and made out at Izzano before March 3, 1883, without the specification of such charges, &c., in detail and to pay duty thereon.

Evidence was further given on behalf of plaintiff tending to show the amount of duty paid upon such barrels and charges, and that plaintiff had, as to some of these entries, complied with the various statutory requirements as to protest, appeal, the commencement of suit, &c.

The objections stated in the protests were "because you have exacted duty on the barrels, packing boxes, and cases containing said goods, and on the amount of transportation charges to the importing vessel or port of shipment, contrary to section 7, act of March 3rd, 1883, and because you refuse to receive and consider duly certified invoices of said goods in which the amount of such envelopes and charges are specified. We pay the excess exacted under compulsion solely to get the goods."

At the conclusion of the plaintiff's case the defendant's counsel moved the court to direct a verdict for the defendant on the ground that section 7 of the act of March 3d, 1883, did not go into
22 effect until the 1st day of July, 1883, and that the value of the plaintiff's packages, costs, and charges were dutiable, together with the cement, at the time of their importation or withdrawal from warehouse and until the 1st day of July, 1883.

The court granted said motion and directed a verdict for the defendant.

To which ruling and direction the plaintiff, by his counsel, then and there excepted.

And because the foregoing would not by the record otherwise appear, the said judge, at the request of the plaintiff, by his counsel, hath settled and allowed this bill of exceptions and signed the same and directed it to be filed as and for the 25th day of January, 1888, at the October term of 1887 aforesaid.

E. HENRY LACOMBE.

We hereby agree to the foregoing as and for the bill of exceptions in this action and request that it be signed & filed.

HARTLEY & COLEMAN,
Pl'ff's Att'ys.
STEPHEN A. WALKER,
U. S. Att'y, for Def't.

23 [Endorsed:] 8818. U. S. circuit court, southern district of New York. A. C. Babson *vs.* W. H. Robertson. Pl'ff's bill of exceptions. Hartley & Coleman, plaintiff's attorneys, 62 Wall

nine, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Arthur C. Babson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated New York, Nov. 30, 1889.

E. HENRY LACOMBE,
U. S. Circuit Judge, Second Circuit.

30 [Endorsed:] E. & A. A. 797. 8818. U. S. Supreme Court. Arthur C. Babson, plaintiff in error, against William H. Robertson, defendant in error. Citation. Hartley & Coleman, attorneys for plaintiff in error. Due service of a copy of the within citation is hereby admitted this 30 day of Nov., 1888. Stephen A. Walker, P., attorney for defendant in error. U. S. circuit court. Filed Nov. 30, 1888. John A. Shields, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 1480. Arthur C. Babson, plaintiff in error, *vs.* William H. Robertson, late collector of the port of New York. Filed January 8, 1889.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

ARTHUR C. BABSON, PLAINTIFF in error,
vs.
WILLIAM H. ROBERTSON, LATE collector, etc.
} No. 732.

gally exacted on some twelve different importations of Portland cement.

The importations were made at different times, between October, 1882, and April, 1883.

Those made before the passage of the act of March 3, 1883, were entered in bond for warehouse and not withdrawn on entries for consumption until after that act was passed, and were, consequently, dutiable under that act, as provided by section 10.

The other importations were made after March 3, 1883, and before July 1, 1883.

In all the cases duties were assessed on the barrels, packing-boxes, and cases in which the merchandise was contained, as well as on the valuation of the merchandise itself, against the importer's protest, in which the ground was taken that section 7 of the act of March 3, 1883, exempting such things as barrels, packing-boxes, and cases containing merchandise from duty, went into effect on the passage of the act, but the collector held that this section did not go into effect until July 1, 1883, and assessed duties accordingly, although the importer tendered

himself ready to show precisely how much of the entered values covered the barrels, packing-boxes, and cases in which the merchandise of each importation was contained.

The bill of exceptions (pp. 8–11) shows that, after the plaintiff's case was closed, "the defendant's counsel moved the court to direct a verdict for the defendant, on the ground that section 7 of the act of March 3, 1883, did not go into effect until the 1st day of July, 1883, and that the value of the plaintiff's packages, costs, and charges were dutiable, together with the cement, at the time of their importation or withdrawal from warehouse and until the 1st day of July, 1883."

This motion was granted and the jury directed to render a verdict for the defendant. Upon this verdict judgment was entered. To this ruling the plaintiff excepted.

This direction of the court below to the jury was in conflict with the case of *Robertson* v. *Bradbury* (132 U. S. R., 491), and, consequently, the judgment is without support in law, and, it would seem, must be reversed.